

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re: Patent Application of Henry et al. : Group Art Unit: Not Yet  
Assigned  
Appln No.: Not yet assigned : Examiner: Not Yet Assigned  
Filed: Herewith :  
For: NEW PLANTS FORMED BY : Attorney Docket No. FISHER  
MICROPARTICLE  
BOMBARDMENT WITH  
UNCHARACTERISED DNA :  
:

**PRELIMINARY AMENDMENT**

Preliminary to examination of the above-identified application, and prior to the calculation of fees, please amend the application as follows:

**In the claims:**

Please cancel claims 1-21 and add in place thereof claims 22-42. Newly added claims 22-42 are attached hereto on two separate sheets.

**REMARKS**

Newly added claims 22-42 merely represent amended original claims 1-21 which now conform to US claim format. Thus, no new matter has been added by way of this amendment.

Favorable examination of claims 22-42 is earnestly requested.

Respectfully submitted,

HENRY, *et al.*

By:

*Aren 20, 2001*  
Date

*Kathryn Doyle*

KATHRYN DOYLE, Ph.D., J.D.

Registration No. 36,317

MORGAN, LEWIS & BOCKIUS L.L.P.

1701 Market Street

Philadelphia, Pennsylvania 19103-2921

Telephone: (215) 963-5000

Direct Dial: (215) 963-4723

Facsimile: (215) 963-5299

E-Mail: kdoyle@morganlewis.com

**Newly Added Claims 22-42 in Henry et al.**

22. A method of transferring a gene into a plant cell, said method comprising:
  - (a) transforming a recipient plant cell or tissue by microparticle bombardment with DNA directly isolated from a donor plant; and
  - (b) selectively propagating a transgenic plant from said transformed recipient plant cell or tissue obtained in step (a).
23. The method of claim 22, wherein a selection construct is included at step (a).
24. The method of claim 22, wherein said DNA is genomic DNA.
25. The method of claim 24, wherein said DNA is a high molecular weight fraction of genomic DNA.
26. The method of claim 22, wherein said donor plant and said recipient plant are members of different genera.
27. The method of claim 22, wherein said donor plant and said recipient plant are members of different species.
28. The method of claim 22, wherein said donor plant and said recipient plant is a cereal.
29. The method of claim 28, wherein said donor plant is of the species *Zizania palustris*.
30. The method of claim 22, wherein said recipient plant is of the species *Oryza sativa*.
31. A recipient plant cell or tissue transformed according to step (a) of claim 22.
32. A transgenic plant the genome of which has at least 0.01% of a genome of a donor plant integrated therein.
33. The transgenic plant of claim 32, wherein said genome has at least 0.1% of said donor plant genome integrated therein.
34. The transgenic plant of claim 33, wherein said genome has at least 1.0% of said donor plant genome integrated therein.

**Claims 22-42 Continued in Henry et al.**

35. The transgenic plant of claim 34, wherein said genome has at least 10% of said donor plant genome integrated therein.
36. A transgenic cereal plant according to claim 31.
37. A transgenic *O. sativa* plant according to claim 31.
38. A transgenic plant produced according to the method of claim 22.
39. A transgenic plant according to claim 32, which transgenic plant has one or more phenotypic traits of said donor plant not normally present in said recipient plant.
40. A fruit or grain obtained from the transgenic plant of claim 32.
41. A seed obtained from the transgenic plant of claim 32.
42. A progeny plant propagated from the transgenic plant of claim 32.